UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0284

September Term, 2014

RASHAD AHMAD JASON

v.

NATIONAL LOAN RECOVERIES, LLC

Meredith,
Graeff,
Friedman,

JJ.

Opinion by Meredith, J.
Opinion Concurring in Part and
Dissenting in Part by Friedman, J.

Filed: December 15, 2015

This appeal flows from a suit for damages and declaratory relief filed in the Circuit Court for Baltimore City by Rashad Ahmad Jason ("Jason"), appellant, against National Loan Recoveries, LLC ("National Loan"), appellee. Appellee moved to dismiss the complaint as time barred, and the circuit court granted that motion. Jason appealed.

QUESTION PRESENTED

Although Jason subdivided the arguments in his brief into four sections, the dispositive question is whether the circuit court erred in ruling that Jason's claims were time barred. We conclude that the circuit court did not err in that regard, and we affirm the judgment.[1]

PROCEDURAL AND FACTUAL BACKGROUND

In late 2008, National Loan, a "debt buyer," purchased Jason's credit card debt, as to which Jason was then in default. On January 29, 2009, National Loan filed a lawsuit against Jason in the District Court of Maryland for Baltimore City to collect that debt. At

[1]The "Questions Presented" in Jason's brief were framed as follows:

> 1. Did the Circuit Court err in holding that the Plaintiff's claims for declaratory relief were untimely when they sought a declaration that outstanding judgments obtained by Defendant were void? [Yes]
>
> 2. Did the Circuit Court err in granting a Motion to Dismiss the Plaintiff's declaratory judgment claims without entering a declaratory judgment? [Yes]
>
> 3. Did the Circuit Court err in applying the three year limitation to Plaintiff's claims for unjust enrichment relating to judgments obtained by the Defendant? [Yes]
>
> 4. Did the Circuit Court err in determining that the Plaintiff's claims under the MCDCA [*i.e.*, the Maryland Consumer Debt Collection Practices Act] were time barred? [Yes]

the time it filed suit against Jason, National Loan did not have a license to act as a debt collection agency in Maryland. Despite this, the District Court entered a judgment in favor of National Loan in the amount of $1,323.39 plus costs and interests on March 31, 2009. Jason paid the judgment through garnishment. The judgment was eventually entered satisfied.

On July 30, 2013, Jason filed a complaint captioned "CLASS ACTION COMPLAINT" in the Circuit Court for Baltimore City, seeking to recover money that National Loan collected while it was unlicensed. Although Jason was the sole plaintiff named in the complaint, he claimed that he was filing the suit "On his Behalf and on Behalf of a Class of Persons Similarly Situated." He alleged in the complaint that, if the court certified the case to proceed as a class action pursuant to Maryland Rule 2-231, the proposed class would include "those persons sued by National Loan in Maryland state courts from October 30, 2007 through September 9, 2010 for whom National Loan obtained a judgment for an alleged debt, interest or costs, including attorney's fees in its favor in an attempt to collect a consumer debt." The circuit court never acted on Jason's request to certify his case to proceed as a class action.[2]

[2]As we observed in *Cutler v. Wal-Mart Stores, Inc*., 175 Md. 177, 188 (2007), "there is no statutory or constitutional right to pursue by way of a class action the various claims that were the subject of appellants' complaint. Rather, a class action is a procedural device, created by the judiciary's adoption of a court rule to facilitate management of multiple similar claims. Maryland Rule 2-231 provides that the circuit court may order pursuit of claims by way of a class action if certain requirements are met." (Footnote omitted.)

National Loan moved to dismiss the suit for failure to state a claim, arguing that Jason's complaint was filed after the three-year statute of limitations had expired. Following a hearing, the circuit court granted National Loan's motion to dismiss. Jason filed this timely appeal.

DISCUSSION

The primary issue on appeal is whether there is a statute of limitations that limits when a void judgment may be collaterally attacked. Jason contends that National Loan's judgment against him was void because that creditor lacked legal standing to pursue collection of his indebtedness, and, he asserts, a void judgment may be attacked through collateral proceedings at any time. National Loan does not dispute that void judgments may be collaterally attacked. But National Loan argues that void judgments must be attacked, and any civil action seeking affirmative legal relief relative to void judgments must be filed, *within* the three-year statute of limitations generally applicable to civil actions. We agree with National Loan's contention that the three-year statute of limitations applies to Jason's claims arising out of the judgment National Loan obtained against him in 2009.

I. Void Judgments and the Statute of Limitations

A. Void Judgments

We held in *Finch v. LVNV Funding, LLC*, [hereinafter "*Finch*"], 212 Md. App. 748, *cert. denied*, 435 Md. 266 (2013), that, in Maryland, "a judgment entered in favor of an unlicensed debt collector constitutes a void judgment as a matter of law." 212 Md. App. at 764. That is because "[a] Consumer Debt Purchaser that collects consumer claims through

civil litigation is a 'collection agency' under Maryland law and required to be licensed as such." *Finch*, 212 Md. App. at 758 (quoting Md. State Collection Agency Licensing Bd. Advisory Notice 05-10, May 5, 2010). National Loan does not dispute that it was unlicensed in Maryland at the time it filed suit and obtained its judgment against Jason (although it argued in the circuit court that it did not need to be licensed at the time it pursued the collection suit against Jason). Considering the allegations in the complaint in the light most favorable to the plaintiff, we shall assume for purposes of this appeal (without deciding) that National Loan's judgment against Jason was a void judgment.

A void judgment may be attacked directly through appeal or indirectly through collateral proceedings. *Cook v. Alexandria Nat. Bank*, 263 Md. 147, 153 (1971); *see Finch*, 212 Md. App. at 764 (citing *Klein v. Whitehead*, 40 Md. App. 1, 20 (1978)) (explaining that a collateral attack is an attempt to avoid, defeat, evade, or deny the force of a judgment, through a separate action, in a court other than the one that rendered the judgment). As a result, we said in *Finch* that "a void judgment may be assailed at all times and in all proceedings." 212 Md. App. at 765. "[T]he situation is the same as it would be if there were no judgment." *Cook*, 263 Md. at 152 (quoting with approval 46 AM. JUR. 2d *Judgments* § 49 (1969)). *But cf. Mostofi v. Midland Funding LLC*, 223 Md. App. 687, 701 (2015) (collateral attack was not permitted where jurisdictional argument had been raised and decided in the litigation leading to the judgment; we stated: "Having failed to convince one trial court that jurisdiction was a problem, and having failed to appeal, Mr. Mostofi does not get another bite at the apple, even if we were to assume that he was right (and we do not)

about who owned his debt. His collateral attack on the underlying debt judgment, then, is barred under *res judicata*." We further stated in *Mostofi*, 223 Md. App. at 703: "When a party tries to use one of these [consumer protection statutes such as the Maryland Consumer Debt Collection Act] to attack a judgment against him or her collaterally, . . . res judicata/claim preclusion normally bars the attack.").

B. Statute of Limitations

Jason sought to recover the money National Loan had received from him in payment on account of the void judgment, and sought declaratory and injunctive relief relative to National Loan's collection actions against him. Jason contends that there should be no statute of limitations applicable to attacking a void judgment; but, in the alternative, Jason argues that, if a statute of limitations does apply to void judgments, it should be the twelve-year statute of limitations applicable to "specialties," found in Section 5-102 of the Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"). He contends that the circuit court erred by applying the general three-year statute of limitations found in CJP § 5-101. National Loan responds that the twelve-year statute of limitations is inapplicable, and that the trial court correctly applied the three-year statute of limitations pursuant to CJP § 5-101. We conclude that the circuit court did not err in ruling that Jason's claims are subject to the three-year statute of limitations.

In support of Jason's contention that no statute of limitations should apply to an attack upon a void judgment, Jason points out that Maryland Rule 2-535(b) provides: "On motion of any party filed *at any time*, the court may exercise revisory power and control over

the judgment in case of fraud, mistake, or irregularity." (Emphasis added.) He asserts that, in light of the fact this rule indicates that there is no time limit on motions to revise judgments where the motion is based upon fraud, mistake or irregularity, we should give literal effect to the language in *Finch* stating that "a judgment which is void may be collaterally attacked *at any time*." 212 Md. App. at 765 (quoting *Tucker v. Tucker*, 35 Md. App. 710, 712 (1977)) (emphasis added). National Loan counters that Jason's reliance upon the "any time" language is misplaced. National Loan argues that *Finch* merely confirmed that a claim that a judgment is void and unenforceable may be raised as a *defense* at any time. National Loan notes that no statute of limitations was at issue in *Finch*, and, despite this Court's quotation of the above language from *Tucker*, *Finch* did not hold that an affirmative collateral attack upon a void judgment could be instituted after the statute of limitations had run.

We are persuaded that offensive collateral attacks upon void judgments must be brought within the period of the statute of limitations applicable to other civil actions. *First*, we note that the text of CJP §5-101 strongly suggests that all civil actions are subject to a statute of limitations:

> A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced.

See also Greene Tree Homeowners Ass'n, Inc. v. Greene Tree Assoc. 358 Md. 453, 460-61 (2000) (noting that, when CJP § 5-101 was revised in 1974, it was re-written to establish a blanket statute of limitations generally applicable to all civil actions and exceptions must be

specifically granted by the legislature); and *AGV Sports Group, Inc. v. Protus IP Solutions, Inc.,* 417 Md. 386, 392 (2010) (noting that the default statute of limitations in Maryland is three years).

Second, subjecting claims attacking a void judgment to a statute of limitation is consistent with the purpose for which statutes of limitation are adopted. Statutes of limitations are "designed primarily to assure fairness to defendants on the theory that claims, asserted after evidence is gone, memories have faded, and witnesses disappeared, are so stale as to be unjust." *Philip Morris USA, Inc. v. Christensen*, 394 Md. 227, 238 (2006). Allowing suit to be brought to attack a void judgment after an unlimited span of time would engender the sort of problems that statutes of limitation are designed to prevent.

Third, application of the statute of limitations does not imply tacit approval of a tortfeasor's tortious conduct. If National Loan had wrongfully gained any other financial benefit from Jason, instead of obtaining it by way of a judgment now recognized as void, Jason would be required to file a suit to recover his money (or other remedial relief) within the appropriate statute of limitations for civil actions. The mere fact that Jason alleges wrongdoing on the part of National Loan does not create an exception to the statute of limitations, nor does it eliminate the purpose for having statutes of limitation.

Jason asserts that, if any period of limitations applies to his claims, it should be the twelve-year statute of limitations found in CJP § 5-102(a)(3), *i.e.*, the twelve-year statute of limitations applies to "[a]n action on" a judgment. Section 5-102(a) provides:

> (a) *Twelve-year limitation.* – An action on one of the following specialties shall be filed within 12 years after the cause of action accrues, or within 12

> years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner:
>
> (1) Promissory note or other instrument under seal;
> (2) Bond except a public officer's bond;
> (3) Judgment;
> (4) Recognizance;
> (5) Contract under seal; or
> (6) Any other specialty.

Although several specialties are listed in CJP § 5-102(a), Jason's argument focused exclusively upon the specialty addressed in CJP § 5-102(a)(3), *i.e.*, an action on a judgment. Pursuant to CJP § 5-102(a)(3), the twelve-year statute of limitations has been applied in cases where the holder of a judgment has sought to enforce the judgment. *E.g., O'Hearn v. O'Hearn*, 337 Md. 292 (1995) (holding that the twelve-year statute of limitations applied to a suit seeking payment under a separation agreement incorporated into a divorce decree, which was a judgment); *State Cent. Collection Unit v. Buckingham*, 214 Md. App. 672, 675-76 (2013) (discussing judgment holder's need to renew judgments before the twelve-year statute of limitations expires). Consistent with our general practice of strictly construing statutes of limitation, we decline to extend the limitation period applicable to an action "on" a "[j]udgment" (pursuant to CJP § 5-102(a)(3)) to Jason's action to recover money or other remedial relief for the collection actions undertaken by National Loan. *See Shen Bi v. Gibson*, 205 Md. App. 263, 266 (2012) (holding that "courts will decline to apply strained construction [to statutes of limitation]."). *See also Greene Tree Home Owners, supra*, 385 Md. at 482 (holding: "a statutory specialty does not lie for unliquidated damages"). The twelve-year statute of limitations, therefore, is not applicable.

Instead the three-year statute of limitations set forth in CJP § 5-101 controls. This is the statute of limitations generally applicable to civil suits. *AGV Sports Group,* 417 Md. at 392; *Greene Tree Homeowners*, 358 Md. at 460-61. Section 5-101 mandates that — unless there is a specific exception under another provision of the Maryland Code — "[a] civil action shall be filed within three years from the date it accrues." As discussed above, the exception listed in CJP § 5-102(a)(3) for actions on a judgment does not apply to suits, such as this one, attempting to obtain a judicial remedy for tortious conduct of a debt collector. Neither Jason nor National Loan points to any other statutory exception that could be applicable.[3] Pursuant to the text of CJP § 5-101, a suit seeking to recover damages for an alleged violation of the debt collection laws must be brought within three years.

Our decision to require that suits attacking void judgments comply with the three-year statute of limitations comports with the purposes of statutes of limitation, which are designed to "encourage timely dispositions" and "to avoid the loss of evidence and distortion of memories that make accurate results less likely." *AGV Sports*, 417 Md. at 392 n.4. Additionally, the three-year statute of limitations is the same period that applies to similar causes of action such as fraud, conversion, and misappropriation, which further supports our conclusion that, even when there are allegations of wrongdoing on the part of the defendant,

[3]Jason argues that Maryland Rules 3-535 and 2-535 — addressing the revisory power of the District Court and Circuit Court respectively — reflect a policy to allow extra time for suit to be brought when there was fraud by one of the parties. Those rules, however, deal with the Court's revisory power over otherwise valid judgments and do not constitute an exception to the statute of limitations. We are not persuaded that cases alleging fraud are excepted from the standard statute of limitations.

the plaintiff is still bound by the general statute of limitations. *See Allied Inv. Corp. v. Jansen*, 123 Md. App. 88, 107 (1998) (holding that a cause of action for conversion is governed by the three-year statute of limitations in CJP § 5-101) (*rev'd on other grounds*, 354 Md. 547 (1999)); Maryland Code (1975, 2013 Repl. Vol.), Commercial Law Article, § 11-1206 (stating that an action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered). Therefore, Jason's suit against National Loan was required to be filed within three years of the date on which the cause of action accrued.

C. Determining When the Statute of Limitations Runs

Under the discovery rule, Jason's claim "accrued" when he "knew or reasonably should have known of the wrong." *Poffenberger v. Risser*, 290 Md. 631, 636 (1981) (extending the discovery rule to all civil actions). The burden of pleading facts pertinent to the statute of limitations does not rest solely on one party; the statute of limitations may be pleaded at different points and which party bears the burden to plead it can change accordingly.[4]

[4]"The general term 'burden of proof' encompasses three more precise burdens: (1) the burden of pleading, (2) the burden of production of evidence . . . and (3) the burden of persuasion." LYNN MCLAIN, 5 MARYLAND EVIDENCE § 300:1 at 272 (3d ed. 2013). Previous decisions have examined the allocation of the burdens of production and persuasion in the context of the discovery rule. *Rounds v. Maryland-Nat. Capital Park and Planning Com'n*, 441 Md. 621, 657 (2015); *Newell v. Richards*, 323 Md. 717, 725-26 (1991); *Finch v. Hughes Aircraft Co.,* 57 Md. App. 190, 242-43 (1984). Here, we are focused on proper allocation of the burden of pleading. "The 'burden of pleading' refers to the allocation between parties as to who must plead what facts in order to (1) avoid an adverse judgment on the pleadings and (2) make an issue a proper subject of proof at trial." MCLAIN, § 300:1 at 273.

A plaintiff's complaint may recite the date on which the plaintiff was injured. Although "[n]o technical forms of pleading are required," Maryland Rule 2-303(b), the rules state in Maryland Rule 2-304(c): "Time and place shall be averred in a pleading when material to the cause of action." If the complaint is silent as to the date of injury, then a motion for summary judgment asserting limitations, supported by appropriate affidavit, would be more appropriate than a motion to dismiss for raising that ground. *Rounds v. Maryland-Nat. Capital Park and Planning Com'n*, 441 Md. 621, 655 (2015) (holding a motion to dismiss premature when the complaint did not allege the date on which injury occurred but did allege when the plaintiffs became aware of their injury). But, a motion to dismiss may properly assert the defense of statute of limitations if the complaint states on its face that the date of the alleged injury is more than three years before the filing of the complaint, and the complaint does not, in some way, invoke the discovery rule by setting forth facts that would tend to show that the plaintiff did not discover and with the reasonable exercise of diligence could not have discovered, the fact of his injury. Maryland Rule 2-322(b). *See Norman v. Borison*, 192 Md. App. 405, 419 (2010) (explaining that the determination of whether to grant a motion to dismiss is whether the *complaint* states a cause of action *on its face*); *Pittway Corp. v. Collins*, 409 Md. 218, 238-39 (2009) (repeating that the plaintiff must allege, *in the complaint*, sufficient facts to entitle him to relief and that appellate review of a motion to dismiss for failure to state a claim assumes the truth of all well-pleaded facts and allegations *in the complaint*).

Here, Jason's complaint — filed on July 30, 2013 — included the following allegation in Paragraph 29 regarding the date on which his claim against National Loan accrued: "Without the legal right or Collection Agency license to do so, on January 29, 2009, [National Loan] continued its business of collecting debts when it filed a consumer debt collection action in the District Court of Maryland for Baltimore City against Mr. Jason styled as *National Loan Recoveries, LLC v. Rashad Ahmad Jason*, Case No. 010100040112009 ('Jason Action')." The complaint further alleged in Paragraph 33 that, "in the Jason Action, a judgment was entered against Mr. Jason in the total sum of $2,633.55." In Paragraph 36 of the complaint, Jason alleged that National Loan "sought and obtained a Writ of Garnishment against Mr. Jason's property based upon its bogus and illegal judgment."

In support of National Loan's motion to dismiss, appellee filed with the court a copy of the docket entries from the Jason Action in the District Court. *See* Maryland Rule 5-201 (d) ("A court shall take judicial notice if requested by a party and supplied with the necessary information."). *See also* Maryland Rule 2-322(c) (" . . . If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.").

The docket entries confirmed the allegations made in Jason's complaint regarding the timing of National Loan's collection suit: National Loan filed suit against Jason on January 29, 2009. According to the docket entries, judgment upon affidavit was entered against Jason on March 31, 2009. A writ of garnishment was issued in April 2009, and Jason moved to dismiss the garnishment on April 30, 2009.

At the hearing on the motion to dismiss, counsel for National Loan argued that Jason's causes of action accrued when suit was filed on January 29, 2009, but counsel reiterated that the District Court judgment against Jason was entered on March 31, 2009, and a writ of garnishment was issued in April 2009. Counsel for National Loan argued that, regardless of whether (a) the initiation of the collection suit, or (b) the entry of judgment in the collection action, or (c) the issuance of a garnishment on the judgment put Jason on inquiry notice of his claims against National Loan, all of those events occurred more than three years before Jason filed suit in the Circuit Court for Baltimore City.

The motion court expressed the view that Jason's injury ran from the time of the judgment, and therefore ruled that the "matters before this Court are dismissed on the statute of limitations." The court ruled correctly that, based upon the dates alleged in the complaint, and the undisputed dates reflected in the docket entries, Jason's claims were barred by the three-year statute of limitations.

Because Jason alleged in his complaint that National Loan had concluded its collection efforts as to the judgment against him, there was no need for the court to consider Jason's claims for declaratory relief. Finally, because the ruling on Jason's claim was made

before the circuit court had certified this case to proceed as a class action pursuant to Rule 2-231, and Jason was the sole plaintiff who was within the jurisdiction of the court in this case, we need not address whether other unnamed claimants may exist whose claims would not be barred by limitations.

Although the dissenting opinion suggests that we should not simply affirm the circuit court's judgment, but instead, should reverse the case as to the putative class members who were never joined as parties to Jason's suit, no such request was made by the appellant either in the circuit court or in briefs filed in this Court. As noted in Footnote 1 above, Jason presented only four questions in his brief, and none of them suggested that the circuit court should have held the case open for the benefit of unjoined putative plaintiffs. Indeed, each of the questions raised by appellant is focused upon only "the Plaintiff's" claims. Consequently, simple affirmance of the circuit court's judgment is the appropriate disposition of this appeal.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0284

September Term, 2014

RASHAD AHMAD JASON

v.

NATIONAL LOAN RECOVERIES, LLC

Meredith,
Graeff,
Friedman,

JJ.

Opinion Concurring in Part and
Dissenting in Part by Friedman, J.

Filed: December 15, 2015

I regret that I cannot join the excellent majority Opinion as I agree with every word of it save one: "affirmed." If the majority replaced that one word with the phrase "affirmed in part, reversed and remanded in part," I would join without reservation. Because it does not, however, I must concur in part and dissent in part.

It is my view that the logic of the majority's opinion applies only to the putative class representative, Rashad Ahmad Jason, and not to the other members of the putative class. It is only he who failed to satisfy his burden of pleading with respect to the statute of limitations. I would, therefore, affirm as to Jason. With respect to all other members of the putative class, that is all "persons sued by NLR in Maryland state courts from October 30, 2007 through September 9, 2010 for whom NLR obtained a judgment for an alleged debt," I would reverse and remand to the Circuit Court for Baltimore City with instructions to leave the matter open on the circuit court's docket for a 30-day period.[1] During this period, I would permit the putative class to identify a new class representative and amend the complaint to satisfy the burden of pleading with respect to the statute of limitations. If that is not accomplished within the 30-day period, I would direct the circuit court to close the case.[2]

[1]I am neither surprised nor troubled that Jason did not raise this issue in his brief or argument because he believed (erroneously as it turned out) that the fortunes of the other members of the putative class were tied to his own. Once they were uncoupled, however, it became possible, and in my view, necessary to address them separately.

[2] Courts have struggled to identify the appropriate method for dealing with the problem of a class representative losing his or her personal stake in the litigation prior to certification, the so-called problem of the "headless class." Comment, *The Headless Class Action: The Effect of a Named Plaintiff's Pre-certification Loss of a Personal Stake*, 39 Md. L. Rev. 121 (1979). My view is that the best method is, as described above, that upon dismissal of the named plaintiff, the case be allowed to remain open on the docket for a

(continued...)

The difference between the two outcomes is important analytically but it might not make much practical difference:

- *First*, upon receiving the Court's opinion, the remaining members of the putative class will presumably draft and file a new complaint. In my view, they should instead only have had to amend their existing complaint. The only practical difference between the two forms of pleading, however, is the $165 filing fee that must accompany the filing of a new complaint;

- *Second*, I don't think that there is a *res judicata* difference between the two outcomes. I do not read the majority opinion to suggest, in any way, that the claims of the remaining members of the putative class will be barred by *res judicata*, both because the issue decided was limited to Jason's individual claim, and the other members of the putative class were not yet parties to Jason's case. Under my preferred outcome, the analysis is even easier, as there wouldn't be a final judgment against the other members of the putative class. Either way, there is no practical difference;

- *Third*, I don't think there is a practical "relation back" difference between the two outcomes. That is to say, the new complaint required by the majority or the amended complaint that I would require would both have to concern the same "operative factual situation" to the *Jason* complaint so that the time of filing will relate back to the *Jason* complaint for statute of limitations purposes. *See Crowe v. Houseworth*, 272 Md. 481, 485-86 (1974). In any event, the standard for relation back would be the same irrespective of whether the new pleading is a new complaint or an amendment to the *Jason* complaint; and

- *Fourth,* I don't perceive a statute of limitations difference between the two outcomes. In light of the majority's opinion, the class will likely identify two

[2](...continued)
reasonable period of time to allow a previously unnamed class member to step forward, amend the complaint, and assume the responsibilities of class representative. *Id*. at 151; *Anderson v. Westinghouse Savannah River Co.*, 406 F.3d 248, 275 (4th Cir. 2005) (allowing, upon remand, for a proper plaintiff to present himself to prosecute the case as class representative) (citing *Goodman v. Schlesinger*, 584 F.2d 1325, 1332-33 (4th Cir. 1978)); *Gonzalez v. Comm'r of Corr.*, 407 Mass. 448, 453 (Mass. 1990) (remanding the case, rather than dismissing, for an appropriate person to be admitted as class representative within thirty days).

> subclasses: Subclass A, consisting of persons sued by NLR between October 30, 2007 and July 30, 2010; and Subclass B, consisting of persons sued by NLR between July 30, 2010 and September 9, 2010. The members of Subclass B, presuming their complaint relates back to the *Jason* complaint, don't have a statute of limitations problem at all. That is because the *Jason* complaint was filed within three years of their injury. The members of Subclass A, by contrast, even after the application of the relation back rule, are facially outside of the statute of limitations. Thus, to survive a motion to dismiss the members of Subclass A must plead sufficient facts to invoke the discovery rule. That is, they must aver that they did not know, nor could they have discovered through reasonable diligence that NLR was unlicensed. That analysis will be the same either way.

So why does it matter? In my view, the Circuit Court for Baltimore City erred by dismissing viable claims, including both claims that were facially timely-filed and claims that application of the discovery rule would have prevented from being time-barred. The majority opinion, in my view, compounds that analytical error by affirming their dismissal.